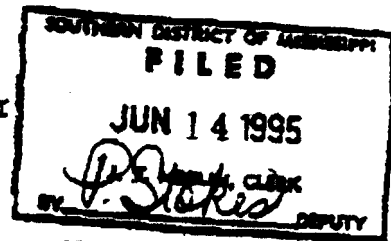


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



MISSISSIPPI CELLULAR TELEPHONE COMPANY
and CENTURY CELLUNET OF BILOXI, INC.

PLAINTIFFS

VERSUS

NO. 1:95-CV-311(Br)

CELLULAR EXTENSION SERVICE, INC. and
L. DEAN MCKAY, individually

DEFENDANT

ORDER

On the original Complaint of Mississippi Cellular Telephone Company and Century CellUNET of Biloxi, Inc. (hereinafter "Plaintiffs"), and request for temporary restraining order, preliminary and permanent injunction, filed on June 12, 1995, the Court finds:

1. Plaintiffs are suffering injury from Defendants, Cellular Extension Service, Inc. and L. Dean McKay, Individually, manipulating, transferring or emulating Electronic Serial Numbers (ESN). This has resulted in an incalculable loss of revenue from, among other things, loss of monthly access and long distance access fees. This injury is irreparable because Plaintiffs have no means of monitoring the use of cellular phones with altered, manipulated, transferred or emulated ESNs, and therefore, has no way to bill for this unauthorized use of a cellular phone.

2. Plaintiffs can only determine the names of customers using cellular phone with altered, manipulated, transferred or emulated ESNs by review of the records of Defendants, Cellular Extension Service, Inc. and L. Dean McKay, individually.

3. Plaintiffs will suffer irreparable harm if records of Defendants, Cellular Extension Service, Inc. and L. Dean McKay, individually are altered or destroyed prior to the granting of this temporary restraining order, and therefore, no notice to the Defendants of this order was required.

Therefore, it is ordered:

1. Defendants, Cellular Extension Service, Inc. and L. Dean McKay, individually are enjoined from and shall cease any manipulating, altering, emulating or transferring of ESNs on cellular phones.

2. Defendants, Cellular Extension Service, Inc. and L. Dean McKay, individually are further enjoined from and shall cease to alter or destroy any records, defined in its broadest sense to include all written, printed, typed, recorded, or graphic matter of every kind and description, including, drafts, originals and copies, and all attachments and appendices thereto which relate or refer to the altering, manipulating, transferring or emulating of ESNs or the names of individuals and/or entities with cellular phones having altered, manipulated, emulated or transferred ESNs. Without limiting it, the term "records" includes all agreements, contracts, communications, correspondence, letters, telegrams, telexes, messages, memoranda, records, reports, books, summaries, tape recordings or other records of telephone conversations or interviews, summaries or other records of personal conversations, minutes or summaries or other records of meetings and conferences, summaries of other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, forecasts, statistical data, statistical

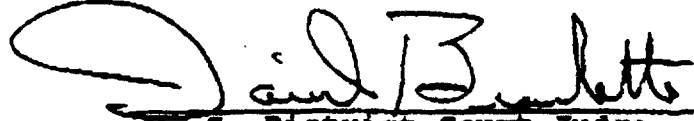
statements, financial statements, worksheets, workpapers, drafts, grafts, maps, charts, tables, accounts, analytical records, consultants' report, appraisals, bulletins, brochures, pamphlets, circulars, trade letters, press releases, notes, notices, marginal notations, notebooks, telephone records, bills, statements, records of obligation and expenditure, invoices, lists, journals, advertising, recommendations, print-outs, compilations, tabulations, analyses, studies, surveys, transcripts of hearings, transcripts of testimony, affidavits, expense reports, microfilm microfiche, articles, speeches, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, punch cards, programs, data compilation form which information can be obtained (including matter used in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made. The term "records" also includes all copies of documents by whatever means made, except that where a document is identified or produced, identical copies thereof which do not contain any markings, additions, or deletions different from the original need not be separately produced.

3. The Court orders Plaintiffs to file with the Court a bond in the amount of \$ 10,000 for the payment of costs and damages as may be incurred or suffered by any part who is found to have been wrongfully restrained.

4. A temporary injunction hearing is set for June 22, 1995, beginning at 3:00 P.M., with the hearing to take

place in Courtroom One, of the Federal Courthouse located at
820 Crawford Street, Vicksburg, MS.

ORDERED on this the 13th day of June, 1995.

A handwritten signature in cursive script, appearing to read "David B. Bennett", written over a horizontal line.

U. S. District Court Judge

GALLOWAY & GALLOWAY, P. A.

ATTORNEYS AT LAW

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Monday, July 10, 1995

Mr. Stephen J. Maggio
2208 18th Street, Suite C
Gulfport, MS 39501

Re: Mississippi Cellular Telephone Company and Celutel of
Biloxi, Inc. v. Cellular Extensions, Inc and L. Dean
McKay

Dear Steve:

This letter will confirm our understanding that the above referenced action will be resolved by Consent Order of the type filed in the similar emulation case in the Eastern District of New York. We will work toward an agreed form of that order without delay, and the TRO will remain in place until entry of the agreed order.

With kindest regards, I am

Very truly yours,


John Galloway

JG\zs
cc: Carson Hughes
Keith White
Robert Wise

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CELLULAR TELEPHONE COMPANY, d/b/a
CELLULAR ONE,

: 95 Civ. 1666 (SJ)

Plaintiff,

-against-

CELLULAR TWO, INC., TONY YANKOVSKY, :
CELLULAR EMULATION SYSTEMS, INC. :
and ALAN J. GEDACHIAN, :

Defendants. :

-----X
NYNEX MOBILE COMMUNICATIONS
COMPANY,

Plaintiff

: 95 Civ. 1666 (SJ)

-against-

CELLULAR EMULATIONS SYSTEMS, INC. :

Defendant. :

-----X

FILED
IN CLERKS OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ 111 - 5 1995 ★
P.M.
TIME A.M.

CONSENT ORDER

Plaintiffs in these consolidated actions having
filed their complaints herein, 95 CIV 1666 (SJ) and 95 CIV
___ (), and plaintiffs and defendants CELLULAR EMULATION
SYSTEMS, INC. ("CES") and ALAN J. GEDACHIAN, by their
respective attorneys, having agreed to the entry of this
Consent Order without admission of liability, it is hereby
ORDERED as follows:

1. CES, GEDACHIAN and all those acting on
behalf of or in concert with either of them (the "CES
defendants") will immediately cease and refrain from all

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emulation activities, including but not limited to emulating, altering, changing, manipulating or tampering with the electronic serial numbers of cellular telephones, or otherwise causing cellular telephones to emit or simulate the emission of electronic serial numbers other than the electronic serial numbers originally programmed into such phones by the manufacturers.

2. In the event the Federal Communications Commission ("FCC") rules, whether in connection with the pending petitions for reconsideration of certain of its Part 22 rules (the "Petitions") or otherwise, that emulation of cellular telephones is permitted and does not violate the FCC's rules, then, subject to paragraph 3 hereof, paragraph 1 hereof shall be of no further force or effect and this action shall be dismissed without prejudice and without costs to any party.

3. In the event that defendants believe that the FCC has ruled in the manner described in paragraph 2, counsel for defendants shall so notify counsel for each plaintiff, in writing. If any plaintiff disagrees in good faith with defendants' interpretation of the FCC's action, either plaintiff may then, within ten (10) business days of receipt of said writing, move the Court for injunctive relief prohibiting defendants from resuming their

emulation activities. If either plaintiff so moves, paragraph 1 hereof shall remain in effect pending the Court's determination of such motion. Plaintiffs will bear the burden of proof in connection with such motion. If neither plaintiff so moves, paragraph 1 hereof shall be of no further force or effect.

4. In the event that all parties hereto agree in writing that the FCC has reaffirmed, whether in petitions before it or otherwise, that emulation violates the FCC's rules, the parties hereto shall jointly request the Court to enter a permanent injunction barring the CES defendants from emulating cellular telephones. The parties shall cooperate in good faith with respect to the preparation of any and all papers necessary to accomplish this end.

5. In the event that either plaintiff believes that the FCC has ruled in the manner described in paragraph 4, counsel for such plaintiff shall so notify counsel for defendants, in writing. If defendants disagree in good faith with such plaintiff's interpretation of the FCC's action, counsel for defendants shall so notify counsel for each plaintiff, in writing, within ten (10) business days. Either plaintiff may then, at any time not less than ten (10) business days

thereafter, apply to the Court to reactivate these consolidated actions and to schedule a hearing on the merits. Paragraph 1 hereof shall remain in effect pending the entry of final judgment.

6. Within thirty (30) days of the entry of this Consent Order, the CES defendants shall provide to each plaintiff the names of each customer of such plaintiff for whom the CES defendants have emulated a cellular telephone, together with the corresponding cellular telephone numbers. Plaintiffs agree that this information shall be used solely for the purpose of identifying those subscribers whose cellular telephones have been emulated.

7. In the event the Court enters a permanent injunction pursuant to paragraph 4 or 5 hereof barring the CES defendants from emulating cellular telephones, then, within thirty (30) days thereafter, the CES defendants shall make available to plaintiffs, for inspection and copying, all documents in their possession, custody or control relating to their emulation activities, exclusive of proprietary documentation (such as financial or corporate documentation) belonging to CES or proprietary documentation belonging to third parties. The restrictions on the use of information set forth in

paragraph 6 hereof shall not apply to any documents produced pursuant to this paragraph 7.

8. This Court retains jurisdiction for the purpose of enabling any of the parties to this proceeding to apply to the Court for such order or directions as may be necessary and appropriate for the enforcement of, and compliance with, this Consent Order.

9. All notices to plaintiff CELLULAR TELEPHONE COMPANY d/b/a CELLULAR ONE shall be sent to: Friedman & Kaplan, LLP, 875 Third Avenue, New York, NY 10022. All notices to plaintiff NYNEX Mobile Communications Company shall be sent to: Carol Abramson, 1095 Avenue of the Americas, Room 3900, New York, NY 10036. All notices to defendants shall be sent to Presberg & Giusto, P.C., 100 Corporate Plaza, Islandia, N.Y. 11722. Any of the above addresses may hereafter be changed from time to time by appropriate written notice to the parties.

10. This Consent Order may be amended only by written instrument and with the consent of the Court.

11. This Consent Order is binding upon and shall inure to the benefit of all parties, their principals, officers, directors, shareholders, employers, agents, successors, heirs and assigns.

12. Upon ten (10) days written notice to all other parties, any party may apply to the Court for such other and further relief as it deems necessary to carry out the terms of this Consent Order.

13. This Consent Order may be executed by the parties in counterparts.

Dated: Brooklyn, New York
June 29, 1995

U.S.D.J.

This was signed by
Judge Johnson on June 29, 1995
in Blue ink - printer will not pick
it up.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
CELLULAR TELEPHONE COMPANY, d/b/a
CELLULAR ONE®

: 95 Civ. 1666 (SJ)

Plaintiff,

: JUDGMENT ON CONSENT

-against-

CELLULAR TWO, INC., TONY YANKOVSKY,
CELLULAR EMULATION SYSTEMS, INC.,
and ALAN J. GEDACHIAN,

Defendants.
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Plaintiff having commenced this action for permanent injunctive relief and the matter having come before the Honorable STERLING JOHNSON, JR., U.S.D.J.; and the Court having issued its Findings of Fact and Conclusions of Law determining that (a) defendants Cellular Two, Inc. and Tony Yankovsky are violating 47 C.F.R. § 22.919(a) by altering cellular telephones so that they emit the same electronic serial numbers as other cellular telephones; and (b) plaintiff Cellular Telephone Company is injured as a result of the violation of 47 C.F.R. § 22.919(a) by defendants Cellular Two, Inc. and Tony Yankovsky, it is,

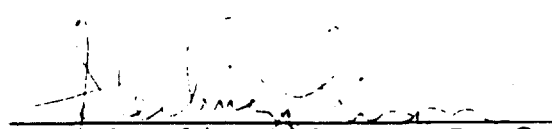
ORDERED, ADJUDGED AND DECREED: That defendants Cellular Two, Inc. and Tony Yankovsky are permanently enjoined:

(A) From emulating, altering, changing, manipulating, or tampering with the electronic serial numbers of cellular telephones, or otherwise causing cellular telephones to emit or simulate the emission of

electronic serial numbers other than the electronic serial numbers originally programmed into such phones by the manufacturer (such conduct defined for purposes of this judgment as "emulating," "emulation," "emulated" and any other variant of the term); and

(B) To turn over to plaintiff Cellular Telephone Company (a) documents sufficient to reveal, with respect to each and every cellular telephone emulated by Cellular Two or Yankovsky, (i) the mobile telephone number, and the electronic serial number emitted by the phone before and after emulation; and (ii) the name, home and business address, and home and business telephone number of the person for whom the cellular telephone was emulated; (b) all work orders, bills, invoices or similar documents issued by or to Cellular Two or Yankovsky in connection with the emulation of any cellular telephone; and (c) any contract, agreement or correspondence between Cellular Two or Yankovsky and any vendor, distributor, or manufacturer of hardware or software used by Cellular Two or Yankovsky in the emulation of any cellular telephone.

Dated: Brooklyn, New York
May 12, 1995



Hon. Sterling Johnson, Jr.
U.S.D.J.

Attorneys for Parties Entitled to Notice of Judgment

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(516) 232-4444

Attorneys for Defendants
Cellular Emulation Systems,
Inc. and Alan J. Gedachian

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

CELLULAR TELEPHONE COMPANY, d/b/a
CELLULAR ONE®

: 95 Civ. 1666 (SJ)

Plaintiff,

: FINDINGS OF FACT,
: CONCLUSIONS OF LAW,
: AND ORDER ON CONSENT

-against-

CELLULAR TWO, INC., TONY YANKOVSKY,
CELLULAR EMULATION SYSTEMS, INC.,
and ALAN J. GEDACHIAN,

Defendants.

:

- - - - - x

FINDINGS OF FACT

1. Plaintiff Cellular Telephone Company

("Cellular One®") is a New York general partnership with its principal place of business in Paramus, New Jersey. Cellular One® is licensed by the FCC as the exclusive provider of cellular communications services on its authorized frequencies in the New York Metropolitan Statistical Area, which includes, among other regions, New York City and Long Island.

2. Defendant Cellular Two, Inc. ("Cellular Two")

is a New York corporation with its principal place of business in Brooklyn, New York.

3. Defendant Tony Yankovsky is a corporate officer of Cellular Two. Yankovsky resides in Brooklyn, New York.

4. The electronic serial number ("ESN") of a cellular telephone is a 32-bit binary number that is factory installed in each individual phone. Each telephone has a

unique ESN. When a customer of Cellular One® or any other cellular carrier initiates or receives a call, his or her phone is identified to the cellular system by its ESN. By identifying the particular phone being used to the cellular system, the ESN enables the cellular carrier to authorize system usage and to bill the appropriate account for the call.

5. "Emulation" is the process whereby a particular cellular telephone is altered so that it emits the ESN installed in a different phone. The cellular system cannot distinguish between a phone emitting a particular ESN because that was the number factory-installed into the phone, and a phone emitting the same ESN because it has been emulated. As a result, emulation enables a person to make a call on one cellular telephone (the emulated phone) while charging the call to another phone (the phone originally assigned that ESN).

6. Defendants Cellular Two and Yankovsky have engaged in the business of emulating cellular telephones for a fee. In particular, without the knowledge or permission of Cellular One®, defendants Cellular Two and Yankovsky have emulated cellular telephones purchased by existing Cellular One® customers so that those phones emit the ESNs of the customers' original, authorized phones. The result of the emulation is that the customers then have a second phone that is indistinguishable to the cellular system from their

pre-existing phone, enabling them to make calls from either phone that will be charged to their one authorized account. The customers thereby obtain an "extension" phone for which they pay no access charge to Cellular One®. Defendants Cellular Two and Yankovsky have publicly advertised their willingness to emulate cellular telephones for a fee.

7. Defendants Cellular Two and Yankovsky have engaged in the business of emulating cellular telephones at a storefront at 1396 Coney Island Avenue, Brooklyn, New York. On March 23, 1995, a private investigator retained by Cellular One® paid a representative of Cellular Two one hundred sixty-nine dollars (\$169.00) to emulate a cellular telephone so that it would emit the ESN C32C392F, the ESN assigned to another cellular phone authorized to use Cellular One®'s system. The Cellular Two representative did emulate the phone, after which both the original, authorized phone and the emulated phone were able to access Cellular One®'s network by emitting ESN C32C392F. The Cellular Two representative informed the investigator that Cellular One® would issue only one bill and that Cellular One® would not detect the second phone with the same assigned number unless there was an excessive amount of activity on the account.

8. The emulation activities of defendants Cellular Two and Yankovsky cause Cellular One® irreparable harm in several ways. First, it interferes with efforts to combat a widespread form of fraud known as "cloning."

Cloning occurs when a cellular phone is emulated to emit the ESN of another phone belonging not to the owner of the emulated phone, but to some unsuspecting customer. Calls made on the emulated phone are then charged to the account of the victim whose phone had been cloned.

9. Cellular One®'s system is able to detect when multiple phones are emitting a single ESN. However, because emulated "extensions" used by legitimate Cellular One® customers, like phones cloned by thieves, emit the same ESN as another phone, it is impossible to distinguish between a phone that has been emulated at a customer's request and a phone that has been cloned without the customer's knowledge. Accordingly, the use of emulated "extension" phones significantly interferes with Cellular One®'s ability to take affirmative action against users of cloned phones. The unauthorized "extensions" act as a smoke screen behind which the thieves can escape detection.

10. Emulation activities also interfere with the operation of Cellular One®'s system. Because there is no way for Cellular One® to determine how many of its customers have had their phones emulated, it is not possible for Cellular One® to properly assess the level of expected system usage. By preventing Cellular One® from accurately predicting system usage, ESN emulation interferes with Cellular One®'s ability to accurately predict the need to expand system capacity. Capacity is limited, and the drain

on system resources leads to a deterioration in service for all customers -- increased static, the inability to complete a call ("blocked" calls) and involuntary disconnections ("dropped" calls).

11. Finally, by enabling customers of Cellular One® to obtain a second cellular phone which is invisible to Cellular One®'s system, emulation allows customers to avoid paying the monthly access fee to which Cellular One® is entitled under its tariff. Because it is impossible to determine how many emulated "extension" phones are in use on the Cellular One® system, it is impossible to determine just how much revenue the Company is losing.

12. Because unauthorized phones with emulated ESNs are invisible to Cellular One®'s system, the Company has no way of knowing how many emulated phones are in use, or who is using them. The Company has no way of identifying and contacting those of its customers who are using unauthorized "extensions." The records maintained by defendants' Cellular Two and Yankovsky are the only source of information that will enable Cellular One® to contact customers whose phones have been emulated by these defendants.

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction over this action pursuant to 47 U.S.C. § 401(b) and 28 U.S.C. § 1331.

2. The regulations of the Federal Communications Commission ("FCC") require that every cellular telephone have a unique ESN. 47 C.F.R. § 22.919(a). Emulating a cellular telephone so that it emits the same ESN as another cellular telephone therefore violates the rules of the FCC. See Report and Order, Revision of Part 22 of Commission's Rules Governing Public Mobile Services, CC Docket No. 92-115, ¶ 60 ("[W]e conclude that the practice of altering cellular phones to "emulate" ESNs without receiving the permission of the relevant cellular licensee should not be allowed . . .").

3. By emulating cellular telephones so that they emit the ESNs assigned to different cellular telephones, defendants Cellular Two and Yankovsky have violated 47 C.F.R. § 22.919(a). See Report and Order, supra, at ¶ 62 ("[A]ny individual or company that knowingly alters cellular telephones to cause them to transmit an ESN other than the one originally installed by the manufacturer is aiding in the violation of our rules").

4. 47 U.S.C. § 401(b) provides that a district court shall enforce obedience to an order of the FCC, by injunction or other proper process, if (a) the order was regularly made and duly served; (b) the defendant is disobeying the order; and (c) the plaintiff is injured thereby.

5. 47 C.F.R. § 22.919 is an order of the FCC within the meaning of 47 U.S.C. § 401(b). See Chesapeake & Potomac Tel. Co. v. Public Serv. Comm'n, 748 F.2d 879 (4th Cir. 1984) (per curiam), vacated on other grounds, 476 U.S. 445 (1986); South Central Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n, 744 F.2d 1107 (5th Cir. 1984), vacated on other grounds, 476 U.S. 1166 (1986); Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 740 F.2d 566 (7th Cir. 1984); Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm'n, 738 F.2d 901 (8th Cir. 1984), vacated on other grounds, 476 U.S. 1167 (1986); Alltel Tenn., Inc. v. Tennessee Public Serv. Comm'n, 913 F.2d 305 (6th Cir. 1990); Hawaiian Tel. Co. v. Public Util. Comm'n, 827 F.2d 1264 (9th Cir. 1987), cert. denied, 487 U.S. 1218 (1988); Mallenbaum v. Adelphia Communications Corp., 1994 WL 724981 (E.D. Pa. Dec. 29, 1994); In re Comcast Corp. Cable TV Rate Reg., 1994 WL 622105 (E.D. Pa. Nov. 10, 1994).

6. 47 C.F.R. § 22.919 was regularly made, pursuant to standard notice and comment procedures. See Hawaiian Tel., 827 F.2d at 1272.

7. 47 C.F.R. § 22.919 was duly served by its publication in the Federal Register on November 17, 1994. See South Central Bell, 744 F.2d at 1120.

8. Because the emulation of cellular telephones

- (a) interferes with Cellular One®'s anti-fraud efforts;
- (b) interferes with the operation of Cellular One®'s